

### **REMARKS**

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-6, 8-14, 16 and 18-23 remain in the application. Claims 1, 13, 16 and 21 are independent.

The Office Action dated January 14, 2009 has been received and carefully reviewed. Each issue raised in the Office Action is addressed below. Reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Applicants further note that, responsive to the indication in the Advisory Action dated June 2, 2009, claim 13 has been amended in an attempt to address the lack of clarity indicated on the Continuation Sheet of the Advisory Action. Upon review, should the Examiner find the instant change not to have addressed the lack of clarity, he is invited to suggest any additional change as he may feel is warranted.

#### **Examiner Interview**

Applicants and Applicants' representative, Mr. Paul T. Sewell, wish to thank Examiner James Keenan for the courtesies extended to Applicants' representative during a telephone Interview conducted on May 11, 2009. During the Interview, Applicants' representative discussed the changes being presented in the instant Amendment as well as the propriety of the combinations of the references of record as applied. More particularly, Applicants' representative indicated the contents of claim 7 are being added to independent claims 1 and 16, along with the feature that the arrangement comprises a portal robot for moving the collecting device over the storage area, and the contents of claim 15 are being added to independent claims 13 and 21, along with the feature that the storage units are arranged above the storage area and fixed in the vertical direction. These features were present in the original claims and, *inter alia*, in paragraphs [0012], [0039] and [0043] as filed, and therefore find basis in the application as filed and therefore do not constitute new matter. Emphasis was placed upon the particular advantages of the fixed location of the intermediate store, as described in the specification. In addition, the differences between the features of the applied prior art, and in particular including Peltomaki and Ellington were discussed with respect to the amended claims, and furthermore,

the combination of Ellington and Peltomaki was argued as improper as no *nexus* has been established between the art of warehouse storage systems and harvesters.

Applicants also appreciate Examiner Keenan's indication that he would consider the discussion along with consideration of the instant changes and arguments presented herein. In addition, Applicants again thank the Examiner for his willingness to conduct the Interview and consider the changes and arguments. The above description is a complete and accurate summary and constitutes Applicants statement of the substance of the Interview.

*Claim Rejections – 35 U.S.C. § 112, Second Paragraph*

Claims 10-16 and 18-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Responsive thereto, all of these claims have either been substantially rephrased or canceled so as to avoid or correct the specific language quoted in the Office Action. It is submitted that all of the claims now particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Reconsideration and withdrawal of the rejections are respectfully requested.

*Claim Rejections – 35 U.S.C. § 102*

Claims 13 and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Peltomaki. Applicants submit that the Examiner has failed to establish a *prima facie* case of anticipation and respectfully traverse the rejection. A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the cited reference must teach or inherently include each and every element of the claims. See *M.P.E.P.* § 2131; *M.P.E.P.* § 706.02.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants respectfully submit that independent claim 13 has been amended to recite a combination of elements in a warehouse running structure including, *inter alia*, a plurality of storage units arranged above the storage area and fixed in the vertical direction, the storage units are fixedly arranged on a portal bridge, which can be moved

independently of the collecting device, and the collecting device cooperating with the storage units are movably arranged on a further portal bridge, whereas the storage units and the collecting device are located opposite each other and objects accommodated in the intermediate store of the collecting device can be transferred directly into the storage units. Applicants submit this combination of features is not shown or suggested by the prior art of record, including Peltomaki.

The Examiner states Peltomaki shows a collecting device 20 movable over a storage area 3 by robot 12, with intermediate store 21 arranged on the collecting device, and conveyor 14 comprises a storage unit. To the contrary, the single storage unit 14 in Peltomaki is not arranged above the storage area and is not fixed in the vertical direction as now claimed. Nor is the storage unit 14 arranged on a portal bridge as now claimed. And in Peltomaki the storage units and a collecting device are not located opposite each other and objects accommodated in an intermediate store of the collecting device can not be transferred directly into the storage units on a portal bridge.

With respect to claim 21, Applicants respectfully submit this claim has likewise been amended to recite a combination of steps in a method of running a warehouse including, inter alia, transferring the objects accommodated in the intermediate store to a storage unit which is independently movable of the collecting device, a plurality of storage units are fixedly arranged on a portal bridge, the storage units arranged above the storage area and fixed in the vertical direction, and the collecting device cooperating with the storage units is movably arranged on a further portal bridge, whereas the storage units and the collecting device are located opposite each other. As noted above, comments of which are incorporated herein, Peltomaki fails to show either this structure or the method of transferring objects by means of this structure, and therefore fails to show or suggest the features of these claims as well.

*Claim Rejections – 35 U.S.C. § 103*

Claim 14 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Beutler. Claims 15/13 and 15/14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Beutler and Eisele. Applicants submit the Examiner has

failed to establish a *prima facie* case of obviousness and respectfully traverse these rejections. A complete discussion of the Examiner's rejections is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the cited references must teach or suggest each and every element in the claims. *See M.P.E.P. § 706.02(j); M.P.E.P. 2141-2144.*

With respect to claim 14, Beutler was cited for a showing of a storage unit 16b independently movable with respect to gripping unit 40. However, Beutler fails to show or suggest a plurality of storage units arranged above the storage area and fixed in the vertical direction, the storage units are fixedly arranged on a portal bridge, which can be moved independently of the collecting device, and the collecting device cooperating with the storage units are movably arranged on a further portal bridge, whereas the storage units and the collecting device are located opposite each other and objects accommodated in the intermediate store of the collecting device can be transferred directly into the storage units, as is recited in claim 13, and therefore cannot make up for the deficiencies of Peltomaki as discussed above with respect to claim 13.

With respect to claim 15, Eisele was cited for collecting device 8 and storage unit 9 arranged on a separate portal bridge. However, Eisele fails to show or suggest a plurality of storage units arranged above the storage area and fixed in the vertical direction, the storage units are fixedly arranged on a portal bridge, which can be moved independently of the collecting device, and the collecting device cooperating with the storage units are movably arranged on a further portal bridge, whereas the storage units and the collecting device are located opposite each other and objects accommodated in the intermediate store of the collecting device can be transferred directly into the storage units, as is recited in claim 13, and therefore cannot make up for the deficiencies of Peltomaki as discussed above with respect to claim 13.

Accordingly, the Office Action fails to make out a *prima facie* case of obviousness of the subject matter recited in currently pending claims 14 and 15.

Claims 1, 3/1-5/1, 6-8, 10-12, 16, 19 and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Ellington. Claims 2, 3/2-5/2, 9, 18, 20 and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Ellington and

Blakely. Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and respectfully traverse these rejections. A complete discussion of the Examiner's rejections is set forth in the Office Action, and is not being repeated here.

With respect to claims 1 and 16, Peltomaki fails to show or suggest a collecting device being movable over the storage area and a portal robot for moving the collecting device over the storage area, an intermediate store arranged in a fixed location above the storage area of the objects to be picked up on the collecting device to accommodate objects to be picked up from the storage area for filling the intermediate store successively from various stacks in separate pick-up steps or the method steps, as now recited. Clearly there is no intermediate store in a fixed location above the storage location of the objects to be picked up as claimed, and clearly Peltomaki is not capable of the functions now recited.

Ellington was cited to show what is alleged to be an intermediate store 65. This combination is not understandable as Ellington is not related to a warehouse conveyor at all. Ellington show a harvester that can pick up and empty filled fruit picker's tubs 12 and transfer the contents into dump bin 14 and the tubs returned to the ground. Ellington can also pick up empty tubs 12 and add it to a stack 22 of tubes, wherein it is accumulated in a magazine 65. Ellington does not relate to running a warehouse, nor does the rejection establish why one of skill in the art of warehouse sorting and collecting would turn to the entirely disparate art of harvesters for solutions to an unnamed problem. Until this nexus has been established this combination fails to establish *prima facie* obviousness. Furthermore, the gripping device in Ellington is not formed by two mutually opposing blades, nor does it have a collecting device being movable over the storage area and a portal robot for moving the collecting device over the storage area, an intermediate store arranged in a fixed location above the storage area of the objects to be picked up on the collecting device to accommodate objects to be picked up from the storage area for filling the intermediate store successively from various stacks in separate pick-up steps, and therefore cannot remedy the defects of Peltomaki discussed above. Neither Peltomaki nor Ellington show that an intermediate store is arranged in a fixed location above the storage area as the objects are picked up. Peltomaki shows an intermediate store, if any, which is vertically moved, and Ellington shows one which, at best, is horizontally moved. Neither of

these references, either singly or in combination, permit the sequential accumulation of objects by a gripping device which can vertically feed any number of objects into an intermediate store in a fixed position above the gripping device.

Blakely is cited for its showing of stacked objects in two mutually opposed halves B and C. However, Blakely fails to show or suggest a pair of vertically movable blades or a collecting device being movable over the storage area and a portal robot for moving the collecting device over the storage area, an intermediate store arranged in a fixed location above the storage area of the objects to be picked up on the collecting device to accommodate objects to be picked up from the storage area for filling the intermediate store successively from various stacks in separate pick-up steps, as are now recited in independent claims 1 and 16, and therefore Blakely cannot make up for the deficiencies of Peltomaki as discussed above.

### Conclusion

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

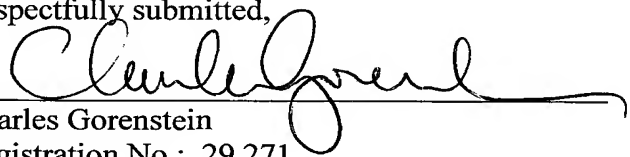
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: June 11, 2009

Respectfully submitted,

By



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